IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

NAND KISHORE & OTHERS. V. THE TEHSILDAR & ANOTHER.

S. B. CIVIL SECOND APPEAL.255/2006 against the judgment and decree dated 6-2-2006, passed by Mr.O.P.Agrawal, RHJS, Additional District Judge No.2, Chittrograrh, in Civil Appeal No.12/2003, whereby the judgment and decree dated 19.02.2003 passed by the Civil Judge (Senior Division), Kapasan in Civil Original Suit No.9/96 was set aside and the suit was dismissed.

DATE OF JUDGMENT : JANUARY 16, 2007.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.H.K.Jain, for appellants.

BY THE COURT:

Heard learned counsel for the appellants.

The apellants plaintiffs are aggrieved against the judgment and decree of the First Appellate Court dated 6th February, 2006, by which the First Appellate Court allowed the appeal of the defendants and dismissed the suit of plaintiffs appellants.

According to the learned counsel for the appellants, the

plaintiff proved that the goods ordered were supplied to the defendant and it is admitted by the witness of defendant that the plaintiff unloaded the goods at site. Not only this, in part payment, the plaintiffs were paid Rs.3030/-.

I considered the submissions of the learned counsel for the appellants and perused the facts of the case. It cannot be disputed that according to the plaintiffs, the goods of bills No.71, 72 and 73 alleged to have been supplied in pursuance of the oral order, therefore, there is no order of supply of goods in favour of the plaintiffs. The plaintiffs failed to prove how they sent the goods to the defendants and also did not produce any receipt evidencing receipt of the goods. The defendants witness clearly stated that the defendant did not receive the goods of bills No.71,72 and 73.

In view of the above, the finding recorded by the First Appellate Court cannot be interfered in the second appeal. Hence, the appeal of the appellants is dismissed.

(PRAKASH TATIA), J.

Scd.